

MASS. SAI.2:R29



A JOSEPH DeNUCCI
AUDITOR

The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

ONE ASHBURTON PLACE, ROOM 1819
BOSTON 02108

(617) 727-6200



NO. 86-2006-3

REPORT ON THE USE OF
"03" CONSULTANTS IN THE DEPARTMENTS
OF MENTAL HEALTH, PUBLIC WELFARE, AND
SOCIAL SERVICES

JULY 1, 1984 TO JUNE 30, 1986

GOVERNMENT DOCUMENTS
COLLECTION

OCT 21 1987

University of Massachusetts
Depository Copy

OFFICIAL AUDIT REPORT

JUL - 8 1987

ISSUED BY THE
Department of the State Auditor



The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

STATE HOUSE, BOSTON 02133

A JOSEPH DeNUCCI
AUDITOR

TEL (617) 727-2075

July 8, 1987

Governor Michael S. Dukakis
Honorable Members of the General Court
Frank T. Keefe, Secretary, Executive Office for Administration and Finance
Philip W. Johnston, Secretary, Executive Office of Human Services
Charles M. Atkins, Commissioner, Department of Public Welfare
Marie A. Matava, Commissioner, Department of Social Services
Edward M. Murphy, Commissioner, Department of Mental Health:

We have reviewed the use of "03" consultants in the Departments of Mental Health, Public Welfare, and Social Services for the two fiscal years ended June 30, 1986. We made our examination in accordance with applicable Generally Accepted Government Auditing Standards and included such tests of the accounting records and other auditing procedures, as we considered necessary in the circumstances.

This report clearly documents the conditions, causes, and effects of the use of "03" consultants at these three vital human service agencies; and, in accordance with professional standards, recognizes the administrative and legislative corrective actions taken to date; and proposes recommendations for reforming the system.

Respectfully submitted,

A handwritten signature in dark ink, reading "A. Joseph DeNucci".
A. JOSEPH DeNUCCI
Auditor of the Commonwealth



Digitized by the Internet Archive
in 2014

<https://archive.org/details/reportonuseof03c00mass>

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
SCOPE, OBJECTIVES, AND METHODOLOGY	4
LEGISLATIVE HISTORY	5
AUDIT RESULTS	9

SUMMARY OF AUDIT RESULTS

This report covers the period July 1, 1984 to June 30, 1986 and consists of a review of \$97 million of the \$135 million in consultant contracts awarded or amended during fiscal year 1986. Our review indicates that the "03" system has not been operating in a manner totally consistent with legislative intent at the departments of Mental Health (DMH), Public Welfare (DPW), and Social Services (DSS). These agencies have found it necessary, because of a lack of authorized state-employee (i.e., "01" and "02") positions and federal-court-ordered consent decrees, to use "03" consultants to perform functions normally provided by regular state employees.

The conditions that we found during this audit are as follows:

1. Consultants Performed as State Employees: Acts of the Legislature as well as certain administrative regulations promulgated by the Executive Office for Administration and Finance (EOAF) have been established in order to control "03" consultant activities. The intent of these laws and regulations is to create a formal distinction between "03" consultants and regular ("01" and "02") state employees. However, the three audited agencies have found it necessary to use consultants as if they were regular state employees--a condition that blurs the intended distinction and also distorts the number of employees needed to effectively carry out state programs. 9

- A. Consultants Performed Ongoing Agency Functions: Our audit tests indicate that during fiscal year 1986 the three auditees employed "03" consultants, under 194 contracts totalling \$20 million, to perform functions that are ordinarily performed by regular state employees in order to provide the services required of these agencies. The contracts at each auditee are as follows: 12

	<u>No. of Contracts</u>	<u>Amount</u>
Dept. of Mental Health	66*	\$ 2,647,237
Dept. of Public Welfare	43	15,261,486
Dept. of Social Services	85	2,154,309
	<u>194</u>	<u>\$20,063,032</u>

*DMH awarded 931 contracts during fiscal year 1986. Our results are based on a review of 102 of these contracts.

- B. Consultants Employed for Prolonged Periods: Although the Legislature clearly intended "03" services to be temporary (EOAF has defined "temporary" to mean "not exceeding one year"), our audit tests identified 401 individuals who were employed at these agencies under consultant contracts on a continuous basis for periods ranging from 13 months to 10 years. These individuals were employed by the three auditees, as follows:
- | | |
|--------------------------|------------|
| Dept. of Mental Health | 203 |
| Dept. of Public Welfare | 154 |
| Dept. of Social Services | 44 |
| | <u>401</u> |
- C. Consultants Directly or Indirectly Supervised State Employees: Under state law, supervisory responsibilities are to be carried out by regular state employees and not by "03" consultants. However, we found that contrary to Chapter 29, Section 29A, of the General Laws, 26 consultants at DPW directly or indirectly supervised state employees during the audit period.
2. DPW's Use of a Consultant as a Fiscal Intermediary: During the period September 1, 1984 through August 31, 1986, DPW awarded two "03" contracts totalling \$23.6 million to TAD Power Temporaries, Inc. (TAD). Under these contracts, TAD provided an intermediary payroll service through which DPW hired as many as 423 individuals to staff mandated programs. As of June 30, 1986 DPW paid TAD \$19.4 million, which included \$14.3 million in salary expenses. Included in the \$19.4 million is the cost of \$716,351 in administrative fees for TAD's services. Also included in the salary cost of \$14.3 million are paid leave costs of between \$1.4 and \$2.2 million. Additionally, DPW spent approximately \$1.3 million through a separate line account in the TAD contract for "sub-consultant" services. DPW could provide us with neither written policies and procedures governing the procurement, compensation, and monitoring of these sub-consultants nor an accurate listing of the number of sub-consultants paid through the line account. DPW officials have indicated their intention to discontinue hiring through this practice.
3. Full-Time Consultants Hired under Blanket Contracts: Contrary to EOAF's regulations, 112 consultants performed full-time ongoing, as opposed to intermittent, services during fiscal year 1986 for DMH and DSS under six blanket contracts. Seventy-two of these consultants (working for DMH) had no contracts, resumes, or financial disclosure forms on file with either DMH or the State Comptroller, as required by the Massachusetts

General Laws, and 11 were former DMH employees who became consultants without proper approval. Improved administrative monitoring and control procedures are needed in order to ensure that agencies' use of blanket contracts complies with all regulatory requirements.

Summary of Administrative and Legislative Action:

On December 9, 1986, the Office of the State Auditor issued an interim report, covering the fiscal year ended June 30, 1985, on the use of "03" consultants in the Executive Office of Transportation and Construction, the departments of Public Works, Public Health, and Environmental Quality Engineering, and Massport. Since the issuance of that "03" report, EOAF has continued its efforts to address the problems in the Commonwealth's "03" system and has taken several new initiatives, including:

- o Working with the state Legislature to convert 764 "03" consultants to state-employee positions in fiscal year 1987. An additional 610 consultants have been recommended for conversion during fiscal year 1988.
- o Drafting revisions to Administrative Bulletin 82-1, which governs the Commonwealth's "03" consultant system. These draft revisions include stronger competitive-procurement requirements, additional prohibitions on blanket contracts, and additional compensation-rate schedules for consultants.
- o The appointing of an individual to fill the newly created position within EOAF of Assistant Secretary for Contract Compliance. This individual monitors and coordinates, on behalf of EOAF, all "03" contracting activity within executive branch agencies.
- o The initiating of a policy whereby all proposed "03" contracts must be personally reviewed by the appropriate Executive Secretary and by the Commissioner of EOAF, who will give final approval or disapproval.

In addition to the action taken by EOAF, the Legislature in 1986 passed into law the requirement that "consultant contracts, whether written with organizations or individuals, shall not be used as substitutes for state positions."

As noted above, the Legislature and EOAF have recognized the need for reform within the Commonwealth's "03" consultant system. We support these measures, which we believe to be positive steps in beginning to address some of the conditions cited in this report.

Summary of Recommendations:

To further improve the "03" system, we recommend that EOAF:

- o Strengthen regulatory guidelines over the duration of consultant services, including individual, organizational, and EDP consultants. The guidelines should specify the requirements and approval criteria for waivers to preclude consultants from becoming, in effect, state employees.
- o Develop and promulgate regulations concerning the use, procurement, and compensation of consultant sub-contractors.
- o Improve administrative monitoring and control procedures over agencies' use of blanket contracts.
- o Establish clear guidelines and criteria for the conversion of "03" consultants to state-employee positions after consultation with the Division of Personnel Administration, Office of Employee Relations, and officials of collective bargaining organizations to ensure protection of current employee promotional opportunities and civil service and collective bargaining rights.
- o Develop a more practical and cost-effective system of internal controls than having the Secretary of EOAF review and approve each and every "03" contract, in order to ensure that the use of "03" consultants is consistent with applicable laws and regulations.

We further recommend that the Legislature:

- o Initiate a project, involving the Senate and House Ways and Means Committees, State Comptroller's Office, Budget Bureau, and Office of the State Auditor, to update and revise the Expenditure Code Manual as well as to provide specific guidelines as to when and under what conditions it is appropriate to use "03" consultants.
- o Amend seemingly conflicting statutory and regulatory language so that specific guidance is provided concerning the proper use of "03" consultants.

We recognize the difficulties faced by state agencies in their efforts to provide mandated services. For many years, various Administrations and Legislatures have attempted to curtail the growth of the state employee payroll, in terms of both dollars and number of positions. At the same time, state agencies have been given responsibility for managing new programs (both federal and state), and events such as court-ordered consent decrees have resulted in the need for increased service and staffing levels. As a result, many millions of dollars for these new services have been appropriated in the "03" subsidiary account.

Since the Commonwealth of Massachusetts has begun to get its fiscal house in order by various efforts to fund the state's huge unfunded pension liability, it is essential that the issue of "03" conversions be seriously reviewed. In order to evaluate the process of converting "03" consultants to regular-employee status, we recommend that a thorough analysis of related costs to the Commonwealth be conducted. The information gained from such an analysis could then be used to guide future policy decisions regarding the utilization of the "03" consultant system.

SUPPLEMENTARY INFORMATION	51
GLOSSARY	52
AGENCY HEADS	53
APPENDICES	
I. "03" Expenditures Statewide; 1985-1986	54
II. Combined "03" Expenditures of DMH, DPW, & DSS; 1985-1986	55
III. Comparative Growth of "03" Expenditures vs. "01"/"02" Expenditures for DMH, DPW, & DSS; 1985-1986	56

INTRODUCTION

The study on the use of "03" consultants was originally intended to consist of one report covering eight agencies. In order to ensure timely exposure of the issues being developed, it was decided to issue two separate reports. On December 9, 1986, the Office of the State Auditor issued an interim report (No. 86-2005-3), covering the period from July 1, 1984 to June 30, 1985, on the use of "03" consultants in the Executive Office of Transportation and Construction, departments of Public Works, Public Health, and Environmental Quality Engineering, and Massport. The second phase of the study, covering the period from July 1, 1984 to June 30, 1986, reports on the use of "03" consultants in the departments of Mental Health (DMH), Public Welfare (DPW), and Social Services (DSS) and on the administrative actions taken since the first report.

The second report indicates that the "03" system has not been operating in a manner totally consistent with legislative intent. The first and second findings indicate that agencies have found it necessary to utilize "03" consultants to perform necessary functions normally provided by state employees and that one agency, DPW, used an "03" consultant as a fiscal intermediary. This report identifies specific practices which we believe indicate the need for further study and evaluation of the current and future use of "03" consultants.

- o A total of \$20 million of the \$97 million in "03" contracts reviewed at the three departments were for consultants hired to perform services similar to those provided by state employees.
- o At the three departments 401 consultants were employed for periods ranging from 13 months to 10 years.
- o We believe 26 consultants at DPW either directly or indirectly supervised state employees, contrary to Chapter 29, Section 29A, of the General Laws.

- o DPW incurred administrative fees of \$716,351 and paid leave costs of between \$1.4 and \$2.2 million by using TAD Power Temporaries, Inc. as a fiscal intermediary.

The third finding discusses how DMH and DSS have used blanket contracts to employ 112 consultants as full-time employees despite the regulatory requirement that blanket contracts be used to purchase only recurrent and intermittent services. For 72 of these consultants, DMH did not file with the State Comptroller contracts, resumes, financial disclosure statements, or other documents required by Chapter 29, Section 29A, of the General Laws.

In accordance with generally accepted government auditing standards, we cite, where appropriate, recent measures taken by the Executive Office for Administration and Finance (EOAF), and we present to the appropriate state agencies specific recommendations for dealing with the conditions discussed in our report. We provided each agency an opportunity to respond to our draft audit report. Based on our review of these responses, we revised, where appropriate, sections of the audit report. We have also included at the end of each finding excerpts from the auditees' responses, and, when necessary, we have replied to the responses.

Since the issuance in December 1986 of the interim report, EOAF has continued its efforts to improve the Commonwealth's "03" system and has taken several new initiatives which include:

- o The instituting of a policy which requires that all proposed "03" contracts be personally approved by the Commissioner of EOAF as well as by the secretary of the executive office having charge of the proposing agency.
- o The appointing of an individual to fill the newly created position within EOAF of Assistant Secretary for Contract Compliance. This individual is responsible for coordinating and monitoring all contracting activities within executive branch agencies.
- o Revising (currently in draft form) Administrative Bulletin 82-1, which represents the main body of regulations governing the "03" system.
- o Working with the House and Senate Ways and Means Committees on the specific conditions for converting 764 "03" consultants to state-employee

positions during fiscal year 1987. In addition, 610 consultants have been recommended for conversion to state-employee positions within fiscal year 1988.

In our opinion, these are positive steps in the reform of the Commonwealth's "03" consultant system. To ensure the success of these initiatives and to restore integrity to the "03" consultant system, we recommend that EOAF:

- o Strengthen regulatory guidelines over the duration of consultant services, including individual, organizational, and EDP consultants. The guidelines should specify the requirements and approval criteria for waivers to preclude consultants from becoming, in effect, state employees.
- o Develop and promulgate regulations concerning the use, procurement, and compensation of consultant sub-contractors.
- o Improve administrative monitoring and control procedures over agencies' use of blanket contracts.
- o Establish clear guidelines and criteria for the conversion of "03" consultants to state-employee positions after consultation with the Division of Personnel Administration, Office of Employee Relations, and officials of collective bargaining organizations to ensure protection of current employee promotional opportunities, and civil service and collective bargaining rights.
- o Develop a more practical and cost-effective system of internal controls than having the Secretary of EOAF personally review and approve each and every "03" contract, in order to ensure that the use of "03" consultants is consistent with applicable laws and regulations.

Matters for Legislative Consideration: In light of the conditions disclosed in our report, we recommend that the Legislature:

- o Initiate a project involving the Senate and House Ways and Means Committees, State Comptroller's Office, Budget Bureau, and Office of the State Auditor to update and revise the Expenditure Code Manual as well as to provide specific guidelines as to when it is appropriate to use "03" consultants in lieu of regular employees.
- o Amend seemingly conflicting statutory and regulatory language so that specific guidance is provided concerning the proper use of "03" consultants.

SCOPE, OBJECTIVES, AND METHODOLOGY

All consultant contracts awarded or amended by the departments of Mental Health (DMH), Public Welfare (DPW), and Social Services (DSS) during fiscal years 1985 and 1986 were considered for our audit tests. The interim report evaluated primarily fiscal year 1985 consultant contracts awarded by the five other agencies reviewed. The current report concerns primarily consultant contracts totalling approximately \$97 million of the \$135 million in consultant contracts awarded or amended during fiscal year 1986.

We audited DMH, DPW, and DSS to determine (1) whether their current use of "03" consultants is in compliance with applicable laws and regulations and is consistent with the legislative intent of the "03" system, (2) the economy and efficiency of their use of "03" consultants, (3) the adequacy of administrative controls over "03" expenditures, and (4) the reasons for their using "03" consultants.

Our audit methodology included (1) reviewing applicable laws, regulations, and relevant state reports; (2) interviewing officials from regulatory agencies involved with the "03" system, namely the Executive Office for Administration and Finance, the Department of Personnel Administration, the State Comptroller's Office, and the Rate Setting Commission; (3) interviewing selected agency officials and staff personnel; (4) examining selected consultant contracts, accounting records, attendance and activity reports, and other related documentation; and (5) performing an on-site review of payroll records located at the offices of a DPW consulting firm. At DPW and DSS, we reviewed all "03" consultant contracts awarded or amended during fiscal year 1986. However, DMH, which awarded 931 consultant contracts during fiscal year 1986, maintains contracts and supporting documentation at over 40 regional and area offices located throughout the state. Because these records are numerous and widely dispersed, we analyzed a statistical sample of 102 DMH contracts.

LEGISLATIVE HISTORY

In August 1963, "An Act Regulating the Hiring of Consultants by Any State Agency, Board, Department or Commission" was approved and became law as Chapter 676 of the Acts of 1963, and it established Chapter 29, Section 29A, of the Massachusetts General Laws, which:

1. Defines the term "consultant" as "a person, who as a nonemployee of the Commonwealth, gives advice or service regarding matters in the field of his knowledge or training and whose compensation is payable from a subsidiary account coded under '03' in the expenditure code manual."
2. Instructs the Commissioner of Administration in the Executive Office for Administration and Finance (EOAF) to make "rules and regulations governing the use of consultants in all departments . . . [and to determine] the rate of compensation of such services. . . ."

The legislative Joint Committee on Ways and Means established the "03" subsidiary account, from which all consultants are paid. Its Expenditure Code Manual (under "03 Services - Non-Employees") contains two requirements for the employment and payment of all (professional and non-professional) consultants. The consultant service "must be for a limited specified period of time," and, second, the service "must be a service which personnel in the classified service of the Commonwealth ordinarily do not render or are not currently available to render [emphasis added]."

A third requirement applies to professional consultants only: "The service . . . must be of recognized professional status requiring discretion and judgment in a formal field of knowledge and academic study, training, or experience." Chapter 29, Section 29A, of the General Laws and the Expenditure Code Manual form the legislative basis of the Commonwealth's "03" consultant system. Twice since then, in 1973 and 1985, the Legislature has acted to address the use of "03" services as well as to re-emphasize the fact that consultants are not state employees and therefore should not ordinarily provide services

that state employees perform. On January 15, 1973, the legislative Joint Committee on Post Audit and Oversight issued a 60-page report on the use of consultants by state agencies. The report noted that EOAF

. . . considers the "03" account as autonomous and has concluded that it is within its prerogatives to use the account for whatever purposes it deems desirable. The present system is too general in nature and lends itself, gratuitously, to abuse.

With respect to the actual use of "03" consultants, the report states:

. . . the "03" subsidiary account [is] being diverted from its true intent and purpose as spelled out in the [Expenditure] Code Manual. Instead of being used to acquire the services, when necessary, of consultants (NON-EMPLOYEES), it has become a vehicle for the employment of personnel who, for all intents and purposes, are state employees.

In its summary, the Committee charged that succeeding Commissioners of Administration have not exercised proper control over the "03" account:

The net result is a series of abuses which have rendered the intent and purpose of the "03" account meaningless. No longer is it the vehicle whereby specialized services are obtained for a particular purpose for a limited specified period of time. It is now merely another method of hiring state employees.

Following the issuance of the Post-Audit Committee's report, Chapter 29, Section 29A, of the Massachusetts General Laws was amended by Chapter 1230 of the Acts of 1973. The amendment added specific filing-and-approval requirements for the hiring of all consultants. Under the amended statute, agencies are required to submit a formal request for each consultant to be hired. The request form must set forth the need for such services, the period of time for which the services are to be engaged, and the scope of work to be done. A written contract and the proposed consultant's resume must accompany each request form. The request must then be approved by the requesting agency's Executive Secretary and filed with the State Comptroller's Office. The amendment further requires that no consultant directly or indirectly supervise a temporary or permanent employee of the Commonwealth.

Section 30 of Chapter 140 of the Acts of 1985 requires the Commissioner of Administration to review every request for consultant services submitted by state agencies. Section 30 of this Act also requires that each "03" consultant contract include the following information: ". . . the manner in which the said services are to be rendered including the tools, implements, equipment necessary and a description of the physical setting in which said services are to be performed. . . ."

This Act was effective for fiscal year 1986 only.

In its fiscal year 1987 budget recommendations report, the House of Representatives addressed the problems in the "03" consultant system. In the section "Budget Reform - A First Step," it is stated:

A further area of concern over the past years has been the inappropriate and often abusive expenditure of funds for non-employee or consultant services, the so-called "03" costs.

The . . . [legislative intent] is clear that an "03" consultant is not an individual who could be defined as an "employee." Nonetheless, there exists, throughout numerous state agencies, hundreds of "03" consultants who are performing jobs which should more appropriately be performed by state employees.

The report also recommends changing the status of several hundred employees from that of "03" consultant to that of regular state employee:

Although on the surface this action increases the number of state employees, in reality this recommendation attempts to restore integrity and validity to the Commonwealth's personnel system. Furthermore, it provides the Department of Personnel Administration with the opportunity to evaluate and recommend fair and equitable salary levels for these employees, something which is now beyond their scrutiny. Finally, the Legislature regains its ability to specify the number of full-time positions which should be hired by any agency during the fiscal year.

Section 19 of Chapter 488 of the Acts and Resolves of 1986 was intended to effectively preclude the use of "03" consultants as state employees:

Consultant contracts, whether written with organizations or individuals, shall not be used as substitutes for state positions.

However, while hundreds of millions of dollars have been appropriated for the hiring of "03" consultants, legal and regulatory language remains open to interpretation. For example, the wording of the two passages quoted below appears contradictory. The first passage states that consultants may be used to perform state-employee-type services as long as there are no regular state-employee positions or funds available. However, the second passage could be construed to mean that consultants cannot be used to perform state-employee-type services under any circumstances.

1. Consultants may provide services which state employees "ordinarily do not render or are not currently available to render."
2. Consultants "shall not be used as substitutes for state positions."

Seemingly conflicting legal and regulatory language, limited funding for state-employee positions, and increased funding for "03" positions have combined to send mixed signals to state agencies as to the intent of the "03" system. Consequently, agencies have determined their own methods for accomplishing their mandated objectives.

AUDIT RESULTS

1. Consultants Performed as State Employees

In our opinion, the Legislature intended to create a formal distinction between regular ("01" and "02") state employees and "03" consultants, yet our audit disclosed that, in many instances, the distinction does not exist. Of the \$135 million in consultant contracts awarded or amended in fiscal year 1986, we tested \$97 million of these contracts at the departments of Mental Health (DMH), Public Welfare (DPW), and Social Services (DSS) and identified that at least \$20 million was used to employ consultants who we believe were performing services similar to those performed by state employees.

These agencies needed to use consultants to perform routine, ongoing services because they have been unable to acquire needed state-employee positions and funding. For instance, DMH officials have been mandated by the federal courts to "use their best efforts to minimize vacancies, absenteeism, and turnover in staff" and to "provide the necessary staff through contracts for services, or use of other means deemed effective in achieving full staffing." According to DMH officials, necessary state positions have not been approved, and, consequently, "03" consultants have been hired to provide the services mandated by the court orders.

DPW explained that the use of "03" consultants to handle ongoing agency responsibilities is a condition that has developed over the past five years as a result of the agency being assigned or undertaking new responsibilities and receiving funding for those activities, but no additional state positions. The inability of the agency to acquire state positions for carrying out its additional responsibilities has resulted in the increased use of consultants.

Despite DPW's increasing responsibilities and annual requests for additional employee positions, the number of DPW's authorized state-employee positions has actually declined, from 4,586 in 1984 to 4,525 in 1986.

The table below presents the three audited agencies' expenditures (in millions of dollars) for "01" and "02" employees and "03" consultants for fiscal years 1985 and 1986 obtained from the Budget Bureau.

	DPW		DMH		DSS		
	<u>01/02</u>	<u>03</u>	<u>01/02</u>	<u>03</u>	<u>01/02</u>	<u>03</u>	<u>Total 03</u>
1985	\$93	\$49	\$339	\$37	\$60	\$2	\$88
1986	\$101	\$59	\$374	\$43	\$66	\$3	105
% Increase	9	20	10	16	10	50	19.3

Using consultants as if they were state employees is permitted under the legislative requirement that "03" consultants provide services which "regular state employees ordinarily do not render or are not currently available to render [emphasis added]." However, a 1973 study of the "03" system issued by the Joint Committee on Post Audit and Oversight criticized the language in the Expenditure Code Manual that permits state agencies to use consultants as state employees. The report describes the language in the Expenditure Code Manual (quoted above with emphasis added) as "very broad and general" and goes on to characterize the clause as an "escape hatch." Although this study was performed 14 years ago, this language has not been amended. In 1986, the Legislature passed into law the requirement that "consultant contracts, whether written with organizations or individuals, shall not be used as substitutes for state positions." Using large numbers of "03" consultants to perform, on an ongoing basis, the tasks ordinarily carried out by state employees blurs the formal and necessary distinction between ("01" and "02") state employees and "03" consultants.

Unless a clear distinction is maintained, the size and composition of the state's workforce cannot be meaningfully determined. In addition, using "03" consultants as state employees understates the number of employees that state agencies need to carry out their mandated responsibilities.

While hundreds of millions of dollars have been appropriated for the hiring of "03" consultants, legal and regulatory language remains open to varied interpretation and continues to provide an "escape hatch" through "very broad and general" language. For example, the wording of the two passages quoted below appears contradictory. The first passage states that consultants may be used to perform state-employee-type services as long as there are no regular state-employee positions or funds available. However, the second passage could be construed to mean that consultants cannot be used to perform state-employee-type services under any circumstances.

1. Consultants may provide services which state employees "ordinarily do not render or are not currently available to render."
2. Consultants "shall not be used as substitutes for state positions."

Seemingly conflicting legal and regulatory language, limited funding for state-employee positions, and increased funding for "03" positions have combined to send mixed signals to state agencies as to the intent of the "03" system. Consequently, agencies have determined their own methods for accomplishing their mandated objectives.

We recommend that the Legislature initiate a project, involving the House and Senate Ways and Means Committees, the State Comptroller, Budget Bureau, and Office of the State Auditor, to update and revise the Expenditure Code Manual, as well as to provide guidelines as to when it is appropriate to use "03" consultants in lieu of regular employees.

Initiatives have been taken by the Governor and State Legislature to convert a total of 1,374 "03" consultants to state-employee positions during fiscal years 1987 and 1988. Authorized conversions include 297 DMH, 290 DPW, and 15 DSS consultants during fiscal year 1987. The Governor has requested that an additional 200 DPW, 112 DMH, and 26 DSS consultants be converted to state positions during fiscal year 1988. We support these initial measures, which we believe will help to rectify some of the conditions cited in this report.

However, the matter of conversions should be reviewed after guidelines and conditions have been established for determining the appropriate use of "03" positions. Since the Commonwealth of Massachusetts has begun to get its fiscal house in order by various efforts to fund the state's huge unfunded pension liability, it is essential that the issue of "03" conversions be seriously reviewed. In order to evaluate the process of converting "03" consultants to regular-employee status, we recommend that a thorough analysis of related costs to the Commonwealth be conducted. The information gained from such an analysis could then be used to guide future policy decisions regarding the utilization of the "03" consultant system.

Three specific findings pertaining to the use of consultants are discussed in the three following sections. Our recommendations immediately follow section C of this finding.

A. Consultants Performed Ongoing Agency Functions: A significant number of "03" consultants contracted by DPW, DMH, and DSS did not provide non-employee services. Instead, consultants were used to perform routine services and services that were, or are also being, performed by state employees--in order to augment an agency's staff.

Department of Public Welfare (DPW): During fiscal year 1986, DPW used consultants in many of its day-to-day operations such as accounting, nursing, social work, clerical services, and management. As many as 465 consultants were hired by DPW under 43 "03" contracts totalling \$15,261,486 to provide services similar to those performed by DPW's regular employees. Consultants and DPW's regular employees reported to the same supervisors and, for the most part, received equivalent salaries and fringe benefits.

DPW hired most of these consultants through its \$13.5 million "03" contract with TAD Power Temporaries, Inc., of Cambridge. This contract, which is discussed in detail in Finding No. 2 of this report, provided a mechanism for

DPW to hire as many as 423 individuals who performed ongoing functions for DPW. The following table breaks down, by type of service, the 388 individuals appearing on the April 23, 1986 TAD Power regular payroll report:

<u>Service Type</u>	<u>Number of Consultants</u>
Medical	85
Program Support	75
Administrative Support	71
Administrative/Managerial	66
Computer Systems	26
Clerical	25
Legal	20
Medical Administrative	12
Public Information	8
	<u>388</u>

As discussed in section B of this finding, many of these individuals have been performing routine services identical to those being performed by DPW's "01" and "02" employees for prolonged periods of time.

DPW officials defended the agency's use of "03" consultants by stating that the number of state-employee positions authorized in DPW's annual budgets has not kept pace with the agency's increased responsibilities.

DPW explained its practice of hiring state-employee-type consultants through the TAD Power contract as follows:

. . . the Department has requested each fiscal year state positions in a number sufficient enough to achieve agency goals and objectives. Not having received these positions, the Department has had to make greater use of TAD employees. . . . Currently, the Department employs 466 individuals with ongoing responsibilities who are paid through TAD. Of this total, 290 or 62 percent work in the Medicaid Division.

The use of TAD employees to handle ongoing agency responsibilities is a practice that has developed, beginning in 1980, as a result of the agency being assigned or undertaking new responsibilities and receiving funding for those activities in the (03) subsidiary, from the Legislature, but no additional state positions. . . . The contract with TAD has proven to be the most cost-effective, administratively feasible alternative to state positions.

These officials concluded that "without these staff. . . between [fiscal years 1982 and 1986] more than \$215 million in Medicaid savings and other significant agency achievements, many of which were required in the budget, would have been at risk."

The Governor's budget recommendations for fiscal year 1988 include a request that 200 TAD Power consultants working for DPW be converted to state-employee positions.

Auditee's Response: In a written response to our draft audit report, DPW officials stated that "the use of contract staff is the result of the agency being assigned over the past six years, additional responsibilities by either the United States Congress or the Massachusetts Legislature." The DPW officials went on to explain that DPW, despite repeated requests, was not authorized new "01" and "02" state positions to perform these additional responsibilities. Instead, increased funding was made available through the "03" consultant account.

DPW officials further pointed out that they have requested over the past six years state positions for "03" consultants whose duties were no longer temporary. Since 1981, only 21 were ever authorized. They also estimated that the additional responsibilities performed by the "03" consultants have saved the taxpayers \$250 million over the past three years--800% more than the entire cost of these "03" consultants over the same three-year period.

DPW officials further stated that the use of "03" consultants to meet these new or expanded functions "clearly made sense" as it was not immediately apparent that these new functions would be DPW's permanent responsibility. Once the permanency was evident, DPW officials took the appropriate steps to convert the consultants to state positions.

In responding to our draft report, DPW officials listed a number of new programs and cost-saving measures that have been successfully developed through the use of consultants while DPW was actually experiencing a reduction of state positions: the Employment and Training Choices program, housing and shelter programs, increased savings in the Finance Division, savings in the management of the Medicaid program, and reduced error rates in the management of Medicaid and AFDC.

In response to the specific issue of DPW's contract for routine services with TAD, DPW officials explained:

The Department acknowledges that the TAD contract was a means by which the Department provided mandated services for which it requested but did not receive state positions. However, given the mandate to provide such services and the failure to acquire new positions, the Department does not agree that providing the services through the TAD contract was inconsistent with legislative intent. . . .

Finally, with the approval of the Legislature, it should be noted that because of the recent actions of the Legislature and the Secretary of Administration and Finance all TAD employees will be converted into permanent state positions.

Auditor's Reply: We acknowledge that DPW has requested but not received additional state positions. Additionally, our report acknowledges DPW's new responsibilities required of the Department and does not question the necessity or the effectiveness of the consultants' performance. Our report shows simply that consultants were used to perform routine ongoing services because state-employee positions were not available.

While we recognize that substantial savings were obtained through the programs cited in the DPW response, we do not believe that these savings resulted from DPW's using consultants to staff the programs. Similar savings may have resulted had regular state positions been available and used.

While we recognize that DPW's consultants were necessary for the agency to provide mandated services, we maintain that, based upon the legislative history of the "03" system (see pages 5 to 8 of this report), the use of consultants to perform ongoing agency functions is inconsistent with the original intent of the "03" system. DPW's interpretation of legislative intent, based upon the annual appropriations to the "03" account, is evidence of the mixed signals that we describe in the finding.

Department of Mental Health (DMH): During fiscal year 1986, DMH initiated 931 consultant contracts totalling \$41,167,027. Based upon our review of 102 of these contracts, we found that 66 (65%) were for services within the scope of DMH's ongoing functions and responsibilities. These 66 contracts, which totalled \$2,647,237 (75% of the total \$3,535,469 in sampled contract dollars), are detailed in the table below:

DMH "03" Contracts for State-Employee-Type Services - Fiscal Year 1986

Direct care of clients	
(service coordination and case management)	53
Medical and psychiatric/psychological	
(direct care and counseling)	9
Administrative	3
Legal	1
	<u>66</u>

DMH uses the "03" subsidiary account to acquire the staff resources necessary to provide DMH's mandated services. In recent years, DMH has experienced what DMH officials described as "severe caps on DMH positions" imposed by the Legislature and EOAF. At the same time, DMH has been required by five federal court rulings (the Massachusetts Consent Decrees, which were filed between February 2, 1972 and December 17, 1975) to provide increased services at specific staffing levels. The text of the consent decrees states:

The defendants will use their best efforts to minimize vacancies, absenteeism, and turnover in staff. If state pay levels fail to attract qualified professionals and other staff necessary to meet the needs of the residents, the defendants will use their best efforts to change the affected pay levels, or provide the necessary staff through contracts for services, or use other means deemed effective in achieving full staffing [emphasis added].

Since new state-employee positions were not approved to aid DMH in responding to this mandate, it became necessary to use the "03" account to hire personnel.

DMH contracting personnel explained that the primary reason for using "03" consultants to perform regular-employee functions is the absence of state positions. The "03" mechanism is also used, according to these officials, when state-employee pay grades are seen to be inadequate to attract and retain medical doctors and psychiatrists. A DMH official explained to us that, of the 688 "03" contracts executed by DMH for fiscal year 1987, 340 were for services that would be more appropriately performed by regular state employees, if positions were made available.

Over the years, DMH has experienced and addressed a whole range of problems created by the existence of an "03" workforce. DMH officials told us that complaints have been received from consultants regarding the lack of job security, benefits, and promotional opportunity for "03" positions. DMH has attempted to address these complaints by providing, to certain "03" consultants, incentives that might create a sense of permanency and that might curtail turnover in these essential positions. For instance, DMH has tied "03" service coordinator salaries to state job groups that, while not analogous in duties, do carry the desired salary. These consultants are also provided with annual pay increases. In one region, a "career ladder" was instituted for service coordinator consultants. The career ladder is essentially a system of step/merit increases and incentives such as promotional opportunities. We

were told that even with the career ladder, "some service Coordinators had left [their jobs] because they were discouraged by failed efforts to secure '02' slots."

In fiscal year 1985, eight employee-type consultants at DMH requested that the IRS determine their status as state employees for the purpose of assessing employment taxes and income taxes. The IRS determined that an employer-employee relationship did in fact exist between the state and these eight consultants. Subsequently, the consultants applied for and received abatements of individual FICA payments based on their IRS-determined status as employees of the state.

DMH officials are acutely aware of the problems inherent in the use of "03" consultant contracts to hire essential staff and have taken two steps toward reducing the number of consultants' performing routine and mandated services.

First, they recommended that "all corporate direct service contracts currently in the 03 be transferred to the 07 subsidiary as part of the FY 87 budget process." This recommendation was based on the fact that "the 03 subsidiary is supposed to fund short-term, interim consultant services and that purpose is reflected in regulation, and in contracting and budgetary policy." The contracts that were proposed for transfer were providing long-term social and rehabilitative programs directly to clients and were therefore more appropriately funded through the "07" purchase-of-service mechanism, which is designed for such services. Approximately 90 such programs were transferred from the "03" to the "07" subsidiary as a result of this recommendation. DMH later cautioned that "even if we are successful with this transfer, it does not resolve the issue of on-going direct care provided by individuals, funded by the '03' subsidiary."

Second, DMH addressed the issue of individual ongoing direct-care providers by requesting additional state "02" positions. Such requests were made routinely for these positions in annual contract renewals until two to three years ago when, according to DMH officials, DMH was discouraged from doing so by EOAF because of the Legislature's apparent unwillingness to fund additional positions. Through authorization in the fiscal year 1987 budget, new state positions are being established. A DMH official stated that "the Department is working with DPA [Division of Personnel Administration] and OER [Office of Employee Relations] to provide . . . a substantial list of proposed new positions based upon extensive personnel analysis." DMH explained that 350 positions would be required for converting "03" consultants. EOAF and the Legislature are planning to convert 297 DMH consultants to state-employee positions. An additional 112 conversions have been requested by the Governor in his fiscal year 1988 budget recommendations.

Auditee's Response: In a written response to our draft audit report, the Commissioner of DMH indicated that DMH did not agree with our conclusion that 71 of the sample of 102 were, in effect, state employees. The Commissioner went on to explain that after detailed examination of the 71 contracts, DMH officials found "that many of them are completely bona-fide uses of '03' consultants"; others have already been converted to "07" contracts; and the remainder are in the process of being converted to permanent state positions.

Specifically, DMH took issue with 22 of the 71 contracts described as within the scope of state positions. Four of the 22 were organizational contracts "later determined by the Department to be more appropriately placed in the "07" subsidiary and were moved to this subsidiary for fiscal year 1987." The remaining 18 contracts, according to DMH officials, were with consultants who were:

(1) rendering services to the Commonwealth on time-limited or term projects for which it would be inappropriate to engage state employees, (2) performing intermittent and/or part-time services to Commonwealth clients; or (3) consultants funded by Federal grant funding and not by state appropriated funds. In all of these cases, it would be incorrect to conclude that these consultants are performing functions that are similar or identical to those provided by state employees.

DMH officials stated that the remaining contracts described in the report are currently in the process of being converted to state employees.

Additionally, responding in general to our draft report, the Commissioner of DMH made the following remarks:

We are pleased that there are no suggestions in the audit that any funds were misapplied or used in any manner other than for the exact purposes that the Legislature appropriated them. The only question raised is whether, in carrying out the legislative mandate--in the cases cited, primarily to provide case managers and service coordinators to our mentally ill and mentally retarded clients, and to provide emergency shelter to our homeless clients in downtown Boston--DMH management erred in deciding to use workers hired as "03" consultants, rather than waiting to start the programs until permanent state employee positions could be established.

These were judgment calls DMH management had to make. In these cases, we felt, quite strongly, that our obligation to provide critical services to clients--in some cases specifically mandated by court order--took precedence over the Commonwealth's normal policy of utilizing permanent state employees whenever possible.

The Commissioner further explained that the various decisions to use "03" consultants were often based on issues of timing. For example, he noted the necessity of getting the homeless shelter programs operating without the delays inherent in other contracting mechanisms. Finally, the Commissioner stated:

We consider entirely appropriate, and indeed that Massachusetts taxpayers are well served by, a system that does not take lightly or make easy the creation of brand new, permanent state employee positions.

Auditor's Reply: After reviewing the auditee's response, we acknowledge that 5 of the 22 contracts could, arguably, be considered as meeting the three criteria set forth in the Expenditure Code Manual. Accordingly, we have modified the report to indicate that 66, rather than 71, of the contracts in our

sample were for services within the scope of DMH's ongoing functions and responsibilities.

We maintain, however, that 66 contracts of our sample of 102 were used by DMH to acquire staff resources necessary to provide services mandated for the Department. We disagree with the DMH response and maintain that the services provided under 17 of the 22 cited contracts were similar to services provided by state employees. We base our conclusion on the following factors:

- o Sixteen of the 17 contracts stated as the justification for using consultants that the requisite state positions were not available.
- o Six of the 17 contracts had rates established using state job groups indicating, according to regulation, that they would be "services equivalent to the duties of positions within the Commonwealth's classification plan."
- o Fifteen of the 17 were for routine direct-care services within state-operated institutions or DMH area offices, including court-ordered case-management and service coordination.
- o Four of the 17 were direct-care contracts with organizations. These four were transferred to the "07" subsidiary and subsequently many of the individuals employed under these contracts have been converted to state-employee positions. The services, regardless of how they were purchased, are within the ongoing responsibility of DMH.

We do not agree that part-time consultant services are necessarily outside the scope of state positions. In the case of part-time direct-care staff (e.g., service coordinators, case managers, mental health attendants), they most certainly are performing ongoing and essential staff functions.

Additionally, DMH has paraphrased as criteria in its response a draft version of new EOAF regulations. While we acknowledge the progress on revisions to these administrative regulations, we note that our review and assessment of DMH's use of consultants in fiscal year 1986 was necessarily based on existing regulation and law. The criteria quoted by DMH did not exist in those regulations.

To summarize, our audit found that 66 of 102 sampled consultant contracts were used to purchase services within the ongoing responsibility and mandate of DMH. We believe that it was necessary for DMH to use consultants to perform ongoing agency functions because an adequate number of state positions were not made available.

It is not our position that DMH acted inappropriately in its use of the "03" subsidiary. Instead, we question, as stated in our report, the implications of this significantly blurred distinction between state employees and "03" consultants. Also, it should be noted that, according to the Expenditure Code Manual, the "02" subsidiary account should be used to purchase temporary and emergency-employee services. The fact that this subsidiary account is not used by DMH for these purposes supports our recommendation that the Expenditure Code Manual is in need of revision.

Finally, the Commissioner of DMH is correct in his general response when he states that our report does not suggest misuse of funds by DMH. We did not, in fact, pose the question of whether or not DMH management erred in its decisions regarding the use of "03" consultants. On the contrary, our report states explicitly the reasons DMH officials presented to us during the audit that led to the decisions to use "03" consultants. Additionally, the elements of court-ordered and emergency programs are presented in the body of this report.

To summarize our opinion, the necessary distinction between state employees and consultants has been blurred by the widespread use of "03" consultants to perform the ongoing, mandated services of the Department. This condition has been addressed by DMH management in requests for additional state positions and most recently by conversion of many long-time "03" consultants to regular state-employee positions. In short, we recognize the causes of this

systemic problem, but do not believe that the causes diminish the need for reform.

Department of Social Services (DSS): During fiscal year 1986, DSS executed 120 consultant contracts totalling \$2,740,983. Of this amount, 85 contracts totalling \$2,154,309 were for services within the scope of state positions. The table below details DSS's fiscal year 1986 consultant contracts, which provided for routine services within the scope of state positions.

<u>Consultant Service</u>	<u>Contracts Awarded</u>	<u>Total Contract Amount</u>
Day Care	37	\$1,011,038
Administration	24	373,938
Legal	2	335,265
Nursing	1	195,100
Clerical	16	149,693
Research	5	89,275
	<u>85</u>	<u>\$2,154,309</u>

Eighty of these contracts were for individual consultant services. The remaining 5 contracts (the nursing and legal contracts and two day-care contracts) were blanket contracts. DSS used these consultants, along with state employees, to carry out many of its daily operations. For example, 24 consultants were contracted to provide administrative support to DSS. The consultants provided such services as reconciling bills, designing and administering programs, planning policies and procedures, and bookkeeping. In most cases, consultants and state employees worked alongside each other, performed similar duties, reported to the same supervisors, and received equal pay.

Another instance involves DSS's 37 day-care contracts. Thirty-two of the 37 contracts were primarily for the Voucher Day-Care Program, which is mandated to provide voucher-management services to 1,500 day-care providers across the state. Duties include establishing and enforcing policies and procedures, monitoring the day-care system, training day-care providers, maintaining caseloads, and reviewing budgets. Nine of the individuals employed under

these contracts are responsible for the overall direction, management, and supervision of the \$19 million Voucher Day-Care Program. These individuals are located at DSS's Central Office in Boston. Our audit revealed that the program was staffed entirely by "03" consultants. Clearly, DSS used the system to augment its existing staff resources.

Seventeen individuals working under consultant contracts during fiscal year 1986 were once regular ("02") employees of DSS. Ten of the 17 held substantially the same job titles under consultant contracts as they had held as regular DSS employees. DSS officials were unable to explain the reasons for these individuals' being converted from "02" employees to "03" consultants. Six of the 17 individuals received significant pay increases, ranging from 26 to 108 percent, upon their becoming "03" consultants. These pay increases are detailed in the table below.

<u>"03" Consultant Position Title</u>	<u>Weekly Pay (37 1/2 Hours/Week)</u>		<u>Percent Increase</u>
	<u>Regular "02" Employee</u>	<u>"03" Consultant</u>	
*Records Manager	\$217.65	\$453.75	108%
*Attorney	384.00	557.25	45
Budget Analyst	261.40	363.75	39
*Program Development Specialist	399.71	540.75	35
*Senior Program Analyst	426.75	558.37	30
*Social Work Technician	308.25	389.25	26

*Individuals who held substantially the same job titles under "02" and "03" employment.

DSS officials agreed with our conclusion that many of DSS's "03" consultants are, in effect, state employees who are needed to carry out DSS's basic functions. These officials emphasized that if additional state-employee positions were to become available through the state budgetary process, DSS would act to transfer its "03" workforce into these positions. DSS's fiscal year 1987 budget authorized DSS to convert 15 "03" consultants to state-employee positions. The Governor has requested that an additional 26 DSS consultants be converted during fiscal year 1988.

Auditee's Response: In its general response to our audit, DSS stated:

Conversions of 03 contracts into 02 state positions, which began with Chapter 140 of the Acts of 1986 and have continued with the Governor's House One recommendation for fiscal year 1988, have already (FY 87) or will prospectively (FY 88) correct any problem area presented by your report.

DSS, however, defined its use of consultants to perform routine services, as follows:

It needs to be made clear that there are a number of appropriate uses of 03 contracts which are both efficient and cost-effective. Some contained in your report, this department will continue to use. The use of the 03 mechanism to start programs whose full scope is yet to be understood (voucher day care, homelessness, nurses to insure health care, etc.) is both appropriate and efficient as it is appropriate as well for functions not performed on a full-time basis; functions where specialized skills are necessary. To schedule state positions in such cases would be irresponsible.

DSS's specific responses to the issue of consultants performing ongoing functions are shown below:

The detail listing of consultants provided by your office indicates that the ninety-two contracts listed applied to sixty-one individuals. Often an individual's contract must be amended slightly during its term to incorporate necessary changes. As reflected in your listing, the majority of individuals, twenty-six were associated with the management of the Voucher Day Care component of the Commonwealth's E.T. Choices Program.

Funding for this program is appropriated to the Department of Public Welfare, then allocated through legislative authority under interagency agreement to the Department of Social Services. This allows the management of both contracted and voucher daycare to occur within a single agency. Given both the technical issues presented by the nature of this funding arrangement; i.e. appropriation to one agency, allocation to another, and the fact the program was new the 03 mechanism was the most efficient method of implementation. During fiscal year 1987, 17 of the 26 positions were converted through 07 contracts. House One for Fiscal Year 1988 requests the conversion of the remaining nine positions.

The next largest group, representing 12 individuals, involved training. The department does not generally employ full-time trainers, preferring to hire under contract specific individuals to conduct specific training sessions or to initiate a specific training program. House One for Fiscal Year 1988 requests the conversion of two training 03's. In the remaining cases, it is our contention that the 03 mechanism is an entirely appropriate way to employ individuals with particular expertise whose work is not full time and whose service is intermittent.

Another six individuals worked as part of the Department's revenue unit. This unit was formed in 1982 to recover over \$10 million in prior year federal reimbursement claims against the Title IVA AFDC foster care program. Since that time, the unit has remained intact to administer the claiming of federal revenue under the title IVE program, approximately \$5 million per year. Five of these positions were converted into state positions during Fiscal Year 1987. The sixth position is a recommended conversion in House One.

The remaining 17 individuals fulfill tasks associated with specific programs, most of which have come into existence during the past three to four fiscal years. These include adolescent assessment, homeless, health care, unaccompanied refugee minors, and respite care programs, etc. In each case, the issues presented were similar to those of voucher daycare, i.e. a new program requiring implementation. Given that the scope of each program has become more clearly defined over time, House One for Fiscal Year 1988 requests that these be converted to 02 positions.

With respect to the 17 consultants cited in our report as being former "02" employees, DSS acknowledged this fact and stated that these individuals were hired as "03s" because new programs had been mandated while no additional "02" positions were made available. DPW officials went on to state:

Of this total, eleven moved into roles with different functions; the result of newly mandated programs. While the responsibilities of these positions were different from those assumed by these individuals in their 02 positions, they were similar in scope to the roles each person performed as a state employee. For example, one individual moved from a Regional Program manager function into the Director of a federally funded program analyzing the outcomes of recent initiatives targeted to help sexually abused children. Another individual moved from a regional direct service function into a similar function within the homeless program.

DSS added that the 6 individuals, cited in the report as having received significant increases, "accepted roles and responsibilities of greater scope within their 03 contract."

Auditor's Reply: After reviewing DSS's response, we acknowledge that 7 training-consultant contracts could, arguably, be considered as meeting the three criteria set forth in the Expenditure Code Manual. Accordingly, we have modified the report to indicate that 85, rather than 92, of the contracts reviewed were for services within the scope of state positions. However, in our

opinion, the remaining 5 training consultant contracts were for the routine, ongoing functions of DSS. Each of these consultants worked full-time (37.5 hours a week), performing services that were also provided by DSS regular employees, and were compensated at state-employee pay grades.

While we recognize DSS's reasons for using "03" consultants to staff start-up programs, we believe such use of consultants has no specific regulatory or statutory basis. We wish to point out that our report has recommended that the Legislature initiate a project that would include a determination of what is the proper and most effective use of consultants. We also wish to note that, with the exception of 10 training consultants noted above, the DSS consultants cited in our report either have been converted or are recommended for conversion to "02" state employees and "07" human service providers.

Regarding the conversion of 17 "02" employees to "03" consultants, because these consultants performed necessary and ongoing services for the department, we believe that they should have more appropriately remained as "02" employees.

B. Consultants Employed for Prolonged Periods: Our audit identified 401 individuals who were employed at DPW, DMH, and DSS under consultant contracts primarily on a full-time, continuous basis for periods ranging from 13 months to 10 years. This practice is contrary to two requirements of the "03" system. The Expenditure Code Manual requires that all "03" services be "for a limited specified period of time." EOAF's Administrative Bulletin 82-1, Section 4.08(a), further defines this time-limitation requirement (for contracts with individuals) to mean "not exceeding one year." However, the Secretary of Administration and Finance may waive the one-year requirement if "a request by an agency and certification by the secretary of its executive office [is submitted] in writing as to the need for such waiver."

If a state agency believes that individual "03" services are needed for an extended period, the agency can simply request a waiver from EOAF. The only requirement is that the request be in writing and that it specify the need for the continued services, but EOAF officials indicated that waivers are rarely denied.

The table below details the duration of continuous employment for the 401 consultants.

<u>Employment Duration</u>	<u>Number of Consultants</u>			<u>DSS</u>
	<u>Total</u>	<u>DMH</u>	<u>DPW</u>	
13 months to 2 years	138	74	29	35
2 to 4 years	209	129*	71	9
4 to 6 years	34	-	34	-
6 to 8 years	15	-	15	-
8 to 10 years	5	-	5	-
	<u>401</u>	<u>203</u>	<u>154</u>	<u>44**</u>

*Based on available records, our review of DMH consultants' service duration extended back to only 3 years. Consequently, we were unable to determine whether any of these consultants have actually been employed for longer periods than shown.

**Ten of these consultants are former "02" employees of DSS. The time these consultants spent as regular DSS employees is not reflected in the above table.

During fiscal year 1986, DMH, DPW, and DSS requested waivers for a total of 272 individual consultants whose services were needed beyond one year. In each case, the agencies specified that "03" services were needed either because state-employee positions were not available or because the consultant provided essential services to the agency in meeting its legislative mandate. The Commissioner of EOAF approved each of these waivers, and the consultants were allowed to continue their employment.

For fiscal year 1986 contracting, both DMH and DSS submitted lists of requests for waivers of the one-year limitation. Both agencies sent lists to

the Executive Office of Human Services (EOHS) and EOAF of groups of consultants that would be continuing in their positions beyond the current contract year.

DSS submitted two waiver lists--one with 27 and the other with 24 individual consultants. In both cases, the stated justification for the continuous employment of consultants was the "absence of scheduled positions" to staff the mandated programs. DSS received approval from EOHS and EOAF of the lists. (Seven of these consultants did not work under contracts in the second year.)

DMH submitted a request list for 129 waivers of the one-year limitation. The list included individuals in 21 different positions ranging from licensing staff and service coordinators to EDP (electronic data processing) programmers and attorneys. All of the 129 consultants had at least one previous waiver of this rule and were therefore beginning at least their third year of continuous employment with DMH. All but 8 of the 129 were employed full-time. The justification for the entire list was that state positions were not available to provide these mandated services. In two individual cases, requests for state-employee positions had been denied. Again, EOHS and EOAF approved the list.

In fiscal year 1986, DMH executed 481 personal-service consultant contracts, 203 of which required and received waivers. Of the 203 consultants, 74 were in their second year of employment and 129 were employed for three or more years. The DMH Contracts Office complied with regulations by always requesting waivers for individual consultants working more than one year.

In addition, 122 individuals working under the TAD Power contracts with DPW have performed, on a full-time basis, routine services at DPW's offices for periods of 1 to 10 years. These individuals are exempt from any restrictions on their length of service, because EOAF's regulations do not require that organizational consultants' services be limited in duration.

Finally, 7 full-time EDP consultants have been working for periods of 2 to 3 years at DPW's offices. These individuals are also exempt from any restriction on their length of service, because EOAF's regulations do not limit the service duration of EDP consultants.

Under current regulations, state agencies may extend, for as long as they wish, the employment of full-time "03" consultants who perform routine services. We believe that, to help ensure that the "03" system operates as originally intended, EOAF should amend its regulations to:

- o Tighten the waiver-request requirements and approval criteria so to preclude individual consultants from becoming, in effect, long-term state employees.
- o Include a requirement that would limit the duration of organizational and EDP consultant contracts.
- o Attempt to convert the "03" positions to state-employee positions if it appears that there is a long-term need for services.

Auditee's Response: DPW officials made two points in response to the issue of prolonged employment of consultants as presented in our draft report. First, they explained that "of the 154 consultants identified in the report, only 32 received individual '03' contracts, the balance are TAD staff." DPW officials believe that to include the 122 TAD employees "as though they were individual '03' contractors is inaccurate." The officials went on to state:

These employees were not individual '03' contractors and there was, therefore, no regulatory requirement that waivers be obtained. (As previously noted, the Department repeatedly has requested that these positions be converted to state positions.)

Second, DPW officials made the point in their response that 26 of 32 individual "03" contracts cited in this section have been terminated, as these consultants' services were no longer required.

DSS officials responded to our draft report by noting that 8 of the 44 consultants who were employed in excess of 1 year have been converted to state positions. DSS officials stated that "the 03 to 02 conversions requested by

House One will eliminate any individuals remaining in this category and remedy this issue entirely."

Auditor's Reply: As we stated in the body of this report, we believe that the legislative intent of the "03" mechanism was to allow agencies to obtain temporary, expert help which could not currently be provided by state employees. Consequently, employing an "03" consultant, individual or corporate, to perform ongoing agency functions for prolonged periods, some as long as ten years, is clearly contrary to this legislative intent. We maintain that EOAF should amend its regulations to strengthen the waiver-request requirements and approval criteria to preclude individual consultants from performing long-term services similar to services performed by state employees.

C. Consultants Directly or Indirectly Supervised State Employees: Chapter 29, Section 29A, of the Massachusetts General Laws states, in part: "No person employed by the Commonwealth as a consultant so-called shall directly or indirectly supervise another temporary or permanent employee of the Commonwealth." EOAF has incorporated this restriction within its "03" regulations and defines the term supervise to mean "to direct the activities of an employee on a continuing and comprehensive basis, by either 'direct' communication, verbal or written, from the contractor to the employee, or by 'indirect' communication through a third party." Both the Massachusetts General Laws and EOAF's regulations clearly prohibit agencies from using consultants to supervise state employees.

To determine agency compliance with these restrictions, we analyzed the available relevant documentation---for example, organization charts, resumes, contract files, and AF-4 forms---and spoke with management officials at each agency. Based on this review, we found that 26 consultants at DPW directly or indirectly supervised state employees.

DPW's records indicated that 26 "03" consultants supervised state employees (7 in fiscal year 1985, 19 in fiscal year 1986). The 19 fiscal year 1986 consultants were employed under DPW's "fiscal intermediary" contract with TAD Power Temporaries, Inc., and directed the activities of 22 DPW employees. The 7 fiscal year 1985 consultants supervised a total of 100 state employees during this period.

The table below details the positions held by these 26 consultants and the number of state employees they supervised.

TAD Power, Inc. Consultants (fiscal year 1986):

<u>Position Title</u>	<u>Number of State Employees Directly or Indirectly Supervised</u>
MMIS System Manager	1
Deputy Budget Director	1
Program Manager VII	1
Manager VI	1
Assistant Budget Director	1
Assistant Budget Director	2
Assistant Budget Director	1
Administrator V	1
PGH Director	2
System Analyst	1
Program Manager VI	1
Manager Financial Unit	2
Director	1
Assistant Director	1
Budget Analyst	1
Medicare Audits Manager	1
Professional Review Manager	1
Director	1
Clerical Supervisor	1
	<u>22</u>

Individual Consultants (fiscal year 1985):

<u>Position Title</u>	<u>Number of State Employees Directly or Indirectly Supervised</u>
Systems Director	2
Special Assistant to the Commissioner	86
Systems Director	6
Systems Director	2
Legislative Outreach Coordinator	1
Assistant Budget Director	2
Budget Coordinator	1
	<u>100</u>

During our audit field work, DPW officials explained that the supervision issue is a result of DPW's use of routine-service consultants. Given that many consultants work alongside DPW employees performing similar functions, some consultants will at times perform supervisory functions. However, DPW added that no consultant has total supervisory authority in such matters as, for example, taking disciplinary action against a state employee. Disciplinary actions against employees can be taken only by other regular supervisory state employees of DPW.

Auditee's Response: DPW officials responded to our draft report, as follows:

Supervision is defined in Administrative Bulletin 82-1 as meaning "to direct the activities of an employee on a continuing and comprehensive basis." To conclude that individuals who are not responsible for disciplinary action or performance evaluation are "supervising" state employees in violation of the law is inaccurate. . . . since the individuals referenced were not, as cited in the . . . report, supervising state employees on a "continuous and comprehensive" basis. Rather, these individuals were used to provide technical expertise and general guidance to state employees. It has been and is the strict policy of the Department not to use consultants to "supervise." The continuous and comprehensive managerial and supervisory functions are the responsibility of state employees as outlined in the Department's Procurement and Contracts Manual which was issued in October, 1985.

Auditor's Reply: In our opinion, the 26 consultants cited in our report either directly or indirectly supervised state employees. Our opinion is based upon a review of job descriptions and departmental organization charts which clearly showed these individuals, in some cases, overseeing whole departments of DPW. Additionally, during the course of our audit, DPW officials stated both verbally and in writing that these individuals were directly supervising state employees.

DPW also contends in its response to our audit report that "the continuous and comprehensive managerial and supervisory functions are the responsibility of state employees and that these consultants were only providing technical

expertise and general guidance." However, a review of the list of "03" consultants supervising state employees appearing in our report indicates that 12 of these individuals are Directors, 7 are Managers, and 2 are Coordinators. We question how these individuals could effectively function in these positions if they were not performing continuous and comprehensive supervision of their staff.

Recommendation: The State Auditor's "Report on the Use of '03' Consultants," dated December 9, 1986, recommended that EOAF:

- o "Conduct a statewide review of '03' consultants who are currently performing state-employee-type services. Such a review would be directed at transferring appropriate '03' consultants to state-employee positions."
- o "Consider establishing a branch that would be . . . responsible for ensuring that agencies comply with EOAF regulations and that the '03' account is used for its intended purpose."

Since the issuance of our last report, EOAF has acted on both of these recommendations. Discussions are continuing between EOAF and the State Legislature for converting 764 "03" consultants to state-employee positions. An additional 610 consultants have been recommended for conversion within the Governor's fiscal year 1988 budget recommendations.

EOAF has appointed an individual to the newly created position within EOAF of Assistant Secretary for Contract Compliance. This individual is responsible for monitoring and coordinating all "03" contracting activities of the executive branch agencies.

In our opinion, these are positive steps in the reform of the Commonwealth's "03" consultant system. To ensure the success of these initiatives and to restore integrity to the "03" consultant system, we further recommend that EOAF:

- o Strengthen regulatory guidelines over the duration of consultant services, including individual, organizational, and EDP consultants. The guidelines should specify the requirements and approval criteria for

waivers to preclude consultants from effectively becoming state employees.

- o Establish clear guidelines and criteria for the conversion of "03" consultants to state-employee positions after consultation with the Division of Personnel Administration, Office of Employee Relations, and officials of collective bargaining organizations to ensure protection of current employee promotional opportunities, and civil service and collective bargaining rights.

We also recommend that the Legislature:

- o Initiate a project involving the Senate and House Ways and Means Committees, State Comptroller's Office, Budget Bureau, and Office of the State Auditor, to provide specific guidelines as to when it is appropriate to use "03" consultants in lieu of regular employees.
- o Amend conflicting statutory and regulatory language so that specific guidance is provided concerning the proper use of "03" consultants.

EOAF's Response: In responding to our draft report, the Commissioner of Administration and Finance described the situation concerning the use of "03" consultants as having changed dramatically during the last two years. He went on to delineate those changes as follows:

As a result of my personal review, begun in November 1985, of every 03 contract into which a state agency enters, the following changes have been made:

1. Identifying, together with the legislature, 1374 03 positions which have served as a supplement to the state workforce and requesting conversion of these 03 positions to 02 positions. 764 of these positions are being converted during FY 1987 and 610 have been requested for FY 1988. In addition, members of my office have met with staff from the House and Senate Ways and Means Committee in order to agree upon the specific process to be followed in connection with such conversions.
2. Hiring . . . [an] Assistant Secretary for Contract Management responsible for coordinating and monitoring all contracting activities for all executive branch agencies.
3. Requiring agencies to prepare 03 Spending Plans which detail the planned use of 03 contracts for the entire fiscal year.
4. Preparing a complete revision of Administrative Bulletin 82-1, i.e., the regulations governing the procurement of 03 contractors, which has been circulated to state agencies for comment prior to issuance effective July 1, 1987 The regulations will include for the first time requirements concerning the type and nature of 03 contracts. These requirements will incorporate the sub-

stantive criteria used in determining which 03 positions should be converted. As a result, 03 services will only be allowed for:

- (a) services which personnel in the classified service of the Commonwealth are not qualified to perform;
- (b) services which could be performed by state personnel but for which it would not be appropriate to hire permanent staff because the services are tied to time-limited funding sources, such as federal grants or state bonds; or
- (c) services which could be performed by state personnel but for which it would not be appropriate to hire permanent staff because the services are short-term, defined as less than one-year with no waiver allowed.

The Commissioner summarized EOAF's position on the use of "03" consultants, as follows:

We believe that it is a proper management decision to initiate new projects and programs through the use of 03 contractors and only to request additional state employees when it is clear that the projects or programs will become part of the on-going operation of the agency. In addition, we believe that the 03 system provides the best means with which to address emergency situations and other short term needs.

Auditor's Reply: We acknowledge the steps taken by EOAF to address the issues raised in this report and in the interim report. We would like to note, however, that there is no existing regulatory or legislative authority to support EOAF's position on the use of "03" consultants to staff new programs or projects. Establishing specific guidelines as to when, and under what conditions, it is appropriate to use "03" consultants, as recommended by our report, should address this issue.

2. DPW's Use of a Consultant as a Fiscal Intermediary

During the 2-year period, September 1, 1984 through August 31, 1986, DPW awarded 2 "03" contracts, totalling approximately \$23.6 million, to TAD Power Temporaries, Incorporated, of Cambridge. (As of June 30, 1986, DPW had expended approximately \$19.4 million.) Under the contracts, TAD provided an intermediary payroll service through which DPW hired as many as 423 individuals to

perform routine functions for DPW's mandated programs.

Our review of the "03" contracts revealed that TAD provided a payroll mechanism that allowed DPW to hire additional staff resources. For this payroll service, DPW paid TAD \$716,351 during the 22-month period September 1, 1984 through June 30, 1986. Documentary and testimonial evidence obtained from both DPW and TAD indicates that the 423 individuals employed under the contracts were recruited, hired, trained, supervised, and evaluated by DPW, but compensated through TAD.

We also point out that vacation, sick, personal, and holiday leave was provided to each of the individuals employed under the TAD contracts. As stated previously, these individuals were hired, supervised, and evaluated by DPW. As a result, we believe that these individuals, in effect, functioned as individual consultants of DPW and not as employees of TAD. Individual consultant contracts with these individuals at DPW would have been subject to all applicable regulations.

For example, Section 4.083 of Administrative Bulletin 82-1 states:

No contract with an individual for services compensated on the basis of a periodic rate shall provide for or permit compensation for any time, such as vacation time, sick time, or holidays, during which the contractor does not actually perform services under the contract.

Therefore, by using TAD contracts to hire individuals who are not subject to the regulations applicable to individual consultant contracts, we estimate that DPW paid between \$1,426,513 and \$2,239,625 during the 22-month period for time each individual did not spend performing services under the contracts. These amounts represent 10 and 15.7 percent, respectively, of the actual salary expense of \$14,265,129 incurred during this 22-month period. The rate of 10 percent was derived by dividing the number of vacation, holiday, and personal paid leave days (26) granted to these individuals by the number of work days in one year (260). This 10 percent rate does not include the 15

sick days provided to these individuals by DPW since the actual time used by these consultants would vary. If, however, these consultants used all of their available sick time, this rate would increase to 15.7 percent.

In addition to these expenditures, DPW spent approximately \$1.3 million through a separate line account in the TAD contract for "sub-consultant" services. Such services are not specifically addressed by EOAF's "03" regulations. DPW officials told us that this line account was used primarily to hire and pay individuals prior to their "03" contracts being approved by the Executive Office of Human Services and filed with the State Comptroller's Office. In our opinion, this practice effectively circumvents the requirements of Chapter 29, Section 29A, of the General Laws, which states, in part:

No payment shall be made to any consultant for any services provided prior to the date upon which the form requesting said services as required by clause (1) has been approved by the secretary having charge of such executive office and a copy of the same has been filed with the comptroller.

Also of concern is the fact that sub-consultants' compensation rates were not subject to approval by either the Division of Personnel Administration or the Rate Setting Commission, and, unlike the 423 consultants on TAD's regular payroll, sub-consultants were not assigned state-employee pay grades. Consequently, we could find no basis for DPW's determination of some sub-consultants' compensation rates.

Moreover, DPW could provide us with neither written policies and procedures governing the procurement, compensation, and monitoring of these sub-consultants nor an accurate listing of the number of sub-consultants paid through this line account.

At the conclusion of our audit field work, DPW officials informed us that DPW has decided to discontinue its practice of hiring sub-consultants through the TAD contract line account. In his fiscal year 1988 budget recommenda-

tions, the Governor has requested that 200 TAD consultants working for DPW be converted to state-employee positions.

Recommendations: DPW should consider phasing out its contracts with TAD. This action would result in, at a minimum, cost savings equivalent to the fee charged by TAD for its payroll service. We believe that DPW should continue its efforts to transfer the individuals currently employed under these contracts to state-employee positions. With regard to the use of sub-consultants, we believe that EOAF should develop and promulgate specific regulations concerning the use, procurement, and compensation of "03" sub-contractors.

Auditee's Response: In responding to our draft report, DPW made the following comments:

A. TAD Staff are not Individual Consultants

TAD is a contractor selected through a competitive bid process to provide staff at a cost savings to the state to accomplish temporary projects.

The Department acknowledges that TAD provided the Department with personnel necessary to perform mandated activities and that such personnel were a complement to the Department's workforce. But these personnel were not individual contractors; they did not receive any of the benefits to which such contractors are eligible (for example, 25% in addition to base pay to cover fringe benefits) and it is simply unfair and incorrect to hold them to the requirements applicable to such contractors.

There is no question but that the TAD contract complied at all times with the requirements applicable to corporate 03 contracts. The TAD contract was approved in August of 1984 on the basis of a competitive procurement in accordance with state regulations.

Finally, with the approval of the Legislature, it should be noted that because of the recent actions of the Legislature and the Secretary of Administration and Finance all TAD employees will be converted into permanent state positions.

B. The Department's Use of TAD

o Cost of TAD

The draft report . . . [implies] that the TAD contract cost the Department [up to] \$2.9 million more than it would have to provide the services through alternative means.

The \$2.9 million figure is composed of \$716,351 of administrative costs paid to TAD and \$2,239,625 of authorized paid days off. . . .

The TAD administrative charge, which is 5% of payroll costs, is less expensive than contracting with each individual. Under A&F Bulletin 82-1 individual consultant contracts, whether paid through the PMIS [Personnel Management Information System] 03 payroll system or invoiced by individual contractors, includes a percentage for fringe above the base payroll amount. This percentage is traditionally 25%. Based on total payroll costs the Department saved approximately \$300,000 by using TAD as opposed to contracting with 423 individuals and saved \$400,000 as opposed to the cost of state employees. Also more staff resources would have been required to process and manage an additional 423 individual consultant contracts.

o Paid Time-Off

The employees of TAD were employees of a corporation. They were paid an annual salary which reflected, as do all annual salaries, the fact that employees were entitled to some vacation time and sick time and were not required to work on holidays. Further, the time off for TAD employees was identical to the time off granted to state employees.

C. Subconsultants Hired by TAD

o Date-Stamp Requirement

TAD was a corporate contractor. There is no statutory or regulatory requirement that corporate contractors must submit subcontracts for date-stamp approval. To the contrary, the model 03 contract (see Administrative Bulletin 85-5) very specifically allows subcontracts so long as the agency gives prior written approval.

o Rates for Subconsultants

All "subconsultants" who were initially hired and compensated through the TAD contract and who were subsequently hired on an 03 individual contract by the Department were paid at a compensation rate determined in accordance with 03 practices and procedures. The compensation rate for each such individual was the same whether under contract with TAD or with the Department. Since the rate paid by the Department received A&F rate approval (either by OMIS [Office of Management Information Systems] or by DPA), it is simply incorrect to state that there was no regulatory basis for determination of the rates.

All individuals whose services were procured through the TAD line item were covered by the same written policies and procedures that the Department had in place for 03 services. These included public advertising for positions, contract mechanisms

to determine rates of compensation, and strict monitoring of an individual's time, attendance, and productivity by their supervisor. Contract files exist for all TAD consultants, and were provided to auditors. The allegation that the Department could not provide an accurate listing of subconsultants paid through TAD is inaccurate. The Department did in fact provide the auditor's office with a complete summary of all expenditures under this account.

As noted in the . . . audit, the Department has discontinued hiring individual consultant[s] through the TAD contract. This practice was discontinued because of the anticipated conversion of the TAD employees and increased efficiency on the part of the Department and A&F in managing the "03" process.

Auditor's Reply: We address DPW's responses in the order presented.

A. Our report does not question DPW's compliance with applicable regulations in contracting with TAD. Instead, we question the nature of the relationship of these consultants to DPW. DPW contends that the consultants hired under the TAD Power contracts are employees of TAD and therefore should not be considered individual DPW consultants. Although we acknowledge the corporate relationship between DPW and TAD, we believe that the individual consultants function as direct consultants to DPW and should be considered as such. All of the individuals employed under the TAD contracts performed services for DPW at DPW facilities and under the direct control of DPW employees. These individuals were recruited, interviewed, and hired by DPW. Salaries, fringe benefits, job titles, and job descriptions for these consultants were determined by DPW, as were pay raises, promotions, transfers, and terminations. Also, personnel records for each of these consultants were maintained at DPW offices.

Further supporting our position is the fact that DPW's internal memoranda and personnel listings, when specifying the nature of the contracting relationship, refer to the TAD "03" contract as its "fiscal intermediary" contract.

DPW inaccurately stated that TAD consultants "did not receive any of the benefits . . . (for example, 25% in addition to base pay to cover fringe benefits)" that individual consultants are eligible to receive. TAD consultants

in fact received full fringe-benefit packages identical to those received by state employees. In addition, many TAD consultants received salaries in excess of the base pay (step 1 of the General Salary Schedule) allowed by regulation.

Finally, it is important to note that in spite of DPW's contention that these individuals are TAD employees and not DPW consultants, DPW is actively seeking to convert all of these consultants to state-employee positions.

B. As stated in our report, the \$2.1 or \$2.9 million is composed of \$716,351 in administrative fees paid to TAD and between \$1,426,513 and \$2,239,625 in authorized paid leave provided by DPW to these consultants.

Regarding the administrative fees, TAD officials told us that they have one full-time employee at DPW who administers DPW's entire TAD consultant payroll. A second TAD employee working at TAD's Cambridge office spends approximately 4 to 6 hours per week entering this consultant-payroll information into TAD's computer and subsequently printing and distributing payroll checks to these individuals.

While we do not question the fee TAD charged for these services, we firmly believe that DPW's own payroll department, which is staffed by 24 full-time employees, could have performed these functions.

In regard to paid leave, we repeat that Section 4.083 of Administrative Bulletin 82-1 states:

No contract with an individual for services compensated on the basis of a periodic rate shall provide for or permit compensation for any time, such as vacation time, sick time, or holidays, during which the contractor does not actually perform services under the contract.

Consequently, according to this regulation, had DPW hired these consultants using individual "03" contracts, it would not have been required to pay these individuals for days, while on leave, when they did not provide services. For these reasons, we do not agree that DPW acted economically in

its decision to use TAD as a fiscal intermediary.

While DPW may have needed additional resources to process individual "03" contracts, we believe that the savings DPW would have realized had it used individual "03" contracts to hire these consultants would have outweighed the cost of any additional resources DPW would need to process the additional contracts.

C. Regarding the use of sub-consultants, specific guidelines for the establishment of rates for sub-consultants do not exist in either EOAF regulation or DPW internal policy. As we mentioned in our report, we requested but never received written policies or procedures governing the procurement of TAD sub-consultants. There is nothing in writing to support DPW's contention that the policies and procedures applicable to "03" consultants also apply to TAD sub-consultants. As we stated in our report, DPW could not provide us with an accurate listing of sub-consultants hired through the TAD contract line account.

DPW provided us with personnel files for a sample of sub-consultants we selected to test; however, these files were incomplete and many lacked job descriptions, contracts, time sheets, and justification for hiring. Consequently, we believe that our concern over monies spent through this budget account was justified, and we are pleased to note that DPW has discontinued this practice.

3. Full-Time Consultants Hired under Blanket Contracts

Administrative Bulletin 82-1 allows agencies to obtain "blanket service authorizations" (blanket contracts) for certain types of "03" services for which the names of the consultants and the specific scope of services to be performed are not yet known. Such services typically include emergency clerical help, student intern work, and any other service that is needed on a recurrent

and intermittent basis. Section 4.043 of Administrative Bulletin 82-1 permits agencies to use a blanket contract only when all of the following are true:

- (a) The services to be provided all fall within a single appropriation item and a single object code in the subsidiary account code manual;
- (b) The number of separate contractors that will be used to provide the services either cannot be predicted with certainty or, if known, exceed four;
- (c) The work to be performed is recurrent and intermittent, such that the exact scope of services to be provided by any individual contractor cannot be accurately estimated.

During fiscal year 1986, DMH and DSS initiated 254 and 23 blanket contracts, respectively. Our review of these contracts revealed that, contrary to condition (c) of Administrative Bulletin 82-1, 112 consultants provided full-time ongoing services for DMH and DSS under 6 of these blanket contracts.

Of further concern is that 72 of these consultants working for DMH had no contracts, resumes, or financial disclosure statements on file with the State Comptroller, despite the requirements of Administrative Bulletin 82-1 (Section 4.042) and Chapter 29, Section 29A, of the General Laws. Without such necessary documentation, meaningful evaluations of the consultants' job performance, salary rates, and possible conflicts of interest cannot be performed. (Fourteen of these consultants are former DMH employees.)

The 72 full-time consultants at DMH and 40 at DSS are discussed in detail in the following two sections.

A. Department of Mental Health (DMH)

In fiscal year 1986, DMH opened two new shelter programs for homeless, mentally ill individuals. The shelters were initially (and remain) staffed entirely by "03" consultants. Seventy-two individuals were employed to work full-time at the two shelters and were compensated through one blanket authorization. Employees from all categories, from the entry-level mental health

aide and bookkeeper to the clinical coordinator, were hired and paid at various rates under the single blanket contract.

The contract was approved on January 7, 1986 with a maximum obligation of \$100,000 and a duration of 6 months. DMH twice amended the contract during the 6-month contract period, increasing its maximum obligation to \$320,000.

The DMH Contracting Manual reinforces Administrative Bulletin 82-1 by specifying that blanket contracts cannot be used for full-time services. The decision to use the blanket method to staff the shelters was made without the involvement of the DMH Contracts Office, which normally controls all DMH purchase-of-service contracts.

DMH contracting regulations specifically require that "a standard personal services contract must be used when the services of a full-time particular individual are needed." A DMH official told us that individual "03" contracts were not used because of the delays and paperwork involved and because the contract and invoicing process is seen as too complicated for some of the entry-level employees. He also believed it would not be practical considering the anticipated staff turnover. For these reasons, individual contracts were not used for any of the entry-level, clinical, or management staff of the shelters.

The legislative Joint Committee on Ways and Means Expenditure Code Manual requires an agency to use the "07" subsidiary account when purchasing social or rehabilitative services for its clients. Vendors providing such "07" services must be extensively reviewed by the contracting agency and the Rate Setting Commission concerning their qualifications, client accommodations, and proposed program costs.

When we asked why the "07" purchase of service mechanism was not used to fund the two shelters, we were told that "the '07' mechanism is too slow to do it right off the bat." We were also informed that DMH plans to convert the

two shelters to "07" programs as soon as possible. We concur with this decision and believe the "07" method to be more appropriate for running a human service program than is the consultant service "03" blanket contract.

The three sub-sections that follow describe our additional concerns with DMH's administration of this blanket contract.

1. Consultants Were Paid Without Contracts and Other Required Documentation: Chapter 29, Section 29A, of the Massachusetts General Laws, and Administrative Bulletin 82-1 require that certain information be supplied to the State Comptroller prior to the authorization of payments to consultants. The information must include a written contract, a resume, and a financial disclosure statement. DMH contracting regulations restate Administrative Bulletin 82-1 with the additional requirement that a standard attachment for "03" blanket services be submitted as a condition of payment. There were no contracts, standard attachments, resumes, or financial disclosure statements for the 72 consultants in the shelter program. Personnel files were not set up for these individuals until February 1986. Our review of the files showed that they contained primarily information regarding changes in employment status; resumes, contracts, and standard attachments had still not been submitted. These individuals were paid on a regular basis even though conditions of payment set by EOAF and DMH were not met.

2. State Employees Became Consultants Without Prior Written Approval: Fourteen of the 72 employees under this blanket had worked for DMH previously as regular employees. Eleven had been on the state payroll within the previous 12 months. DMH's internal regulation explicitly states that "no individual should be employed under a blanket who has been on any state payroll within the last 12 months without the prior written approval of EOHS." Written EOHS approval was not obtained for these 11 transfers. In fact, personnel in DMH's

Contracts Office were not aware that the 14 consultants were former DMH employees, since resumes, contracts, and EOHS approval letters had not been put on file for any of the consultants.

3. Multiple Services Were Purchased Through a Single Blanket Contract:

EOAF has attempted to control the discretionary use of blanket contracts by publishing regulations in Administrative Bulletin 82-1 specifically governing blanket authorizations. By requiring that blanket services all fall within a single object code, EOAF dictates that blanket contracts be used to provide a single type of service. DMH emphasizes this regulation by stating in its contracting manual that "combinations of services from more than one object code for blanket authorizations are prohibited."

The blanket contract in question was authorized under object code 149 "Other Professional Services." While this is arguably a "single object code," it functions as a loophole to allow the purchase by agencies of combinations of services under a single blanket. We believe that this practice successfully circumvents the single-object-code section of EOAF's blanket contract regulations. In this instance, DMH used the blanket contract for "other services" to staff an entire program. The following chart lists the positions and maximum rates of pay that constitute the shelter program's payroll. All positions, from entry level to management, were hired under the single blanket contract.

<u>Position</u>	<u>Rate of Pay (per hour)</u>
Shelter Director	\$16.60
Clinical Coordinator	16.60
Case Manager	11.37
Registered Nurse Supervisor	16.60
Registered Nurse Staff	15.34
Licensed Practical Nurse	13.07
Sr. Mental Health Attendant	10.46
Semi-Sr. Mental Health Attendant	8.98
Mental Health Attendant	8.52
Bookkeeper	8.52

In our opinion, weak controls over the use of blanket "03" contracts encourage the discretionary use of this contracting method. The blanket "03" contract has an important and specific purpose--the hiring of individuals to perform intermittent services when there is uncertainty regarding the exact scope of work and number of people needed. The Commonwealth would retain better control over "03" spending if blanket contracts were restricted to the purposes specified in the regulations.

Auditee's Reponse: In responding to our report, the Commissioner of DMH made the following remarks:

In this instance DMH management made a conscious decision to use a blanket contract to hire full-time direct-care staff to deliver emergency service to the homeless in the city of Boston. We felt the immediate need being addressed here--the necessity to get a large program to serve the homeless up and running within weeks--was so critical, that using this unconventional approach to solving the problem was warranted.

As mentioned in the audit, the program is in the process of being converted to an "07" contract arrangement, even though that costs DMH more in contracted overhead expenses. The personnel data and other administrative "requirements" referred to were not, in fact, requirements of EOHS at the time covered by the audit. Since then, they have become requirements, and steps are now being taken to comply with them.

Auditor's Reply: DMH officials did not express disagreement with our presentation of this issue. We acknowledge again, as in the body of this report, DMH's rationale for using the blanket mechanism in this instance. However, we note that the blanket "03" contract is intended, according to regulation, for the hiring of individuals to perform intermittent services when there is uncertainty regarding the exact scope of work and number of people needed. It is not a mechanism designed as an alternative payroll system for service programs and cannot be adequately controlled when used as such.

We would like to note that our report did not state that EOHS requirements were not met. The regulations cited were specific conditions of payment set

forth by both EOAF and DMH. The full-time employees providing services under the blanket consultant contract were compensated on a regular basis even though the EOAF and DMH conditions were not met.

B. Department of Social Services (DSS)

During fiscal year 1986, DSS employed 40 full-time consultants under 5 blanket contracts. Each of the 40 consultants was required to work 37 1/2 hours per week under written agreements with DSS. These 40 individuals include 16 case aides, 7 nurses, and 17 attorneys. Twenty of the 40 also worked under blanket contracts during fiscal year 1985, and an additional 4 consultants were DSS "02" employees during fiscal year 1985.

All 40 consultants performed routine state-employee-type services. For instance, the 16 case aides worked with DSS employees providing information, referrals, and housing assistance to homeless families; the 7 nursing consultants were contracted to assist DSS in the implementation of its Medical Passport Program; and the 17 attorneys were hired to supplement staff resources in order to meet demands for permanency planning services and other legal needs.

DSS officials stated that the blanket mechanism is an easy and quick way to hire needed individuals in order to accomplish their goals. They agreed that many blanket consultants work on a full-time basis, stating that it is easier to have one blanket contract approved rather than separate contracts for each consultant, especially for certain positions that experience a high turnover rate.

The use of full-time blanket consultants is contrary to Section 4.043 of Administrative Bulletin 82-1, which requires that blanket consultants perform only recurrent and intermittent services.

Auditee's Response: DSS responded that each of the five blanket contracts was "initially put in place as an appropriate method to start a new program"

and to allow "a date stamp to be secured and individuals to be hired while each program's scope was developing." DSS added:

More importantly the 03 mechanism allowed the Department to respond quickly and flexibly to an emerging client need. To have approached these needs through other mechanisms would have been irresponsible. During Fiscal Year 1987, ten of these positions were converted from 03 to 02. The Fiscal Year 1988 House One request allows conversion of the remainder.

Auditor's Reply: Despite DSS's reasons for employing full-time consultants under blanket contracts, we maintain our position that this practice is inconsistent with the existing requirements of Administrative Bulletin 82-1.

DSS stated that the blanket contracts were put in place to respond quickly to emerging client needs. However, 24 of the 40 consultants employed under these blankets had worked full-time for DSS for over one year--sufficient time, in our opinion, for DSS to comply with the requirements of Administrative Bulletin 82-1 by contracting separately with each of the consultants.

Recommendations: EOAF has included additional restrictions on the use of blanket contracts within its draft revision of Administrative Bulletin 82-1. One of these restrictions states:

Agencies shall not contract with any individual under a blanket service authorization if such individual has been working full-time under such authorization for one year.

In order to better control agencies' use of blanket contracts, adequate monitoring procedures should be established within EOAF. Such procedures should include a review of:

- o Agencies' written justifications for requesting "03" blanket contract approval.
- o Resumes, contracts, and financial disclosure forms for all and any consultants who are paid from blanket contracts.
- o Payrolls and payment vouchers to ensure that blanket contract consultants provide recurrent and intermittent services as required by EOAF's regulations.

SUPPLEMENTARY INFORMATION

Disclosure of Pending Litigation

In June 1984, the Department of Public Welfare awarded a \$2.9 million "03" contract to Consultec, Inc., of Atlanta, Georgia.

Consultec was hired by DPW to design, create, test, and implement a computerized Massachusetts Public Assistance Control System (MPACS). MPACS was to be used by DPW in administering public and medical assistance programs such as Aid for Dependent Children (AFDC), Food Stamps, and Medicaid. DPW officials estimated that the entire project would cost \$53 million and take five years to complete. Consequently, this contract was to be the first in a series of contracts to complete this project.

On April 11, 1986, however, DPW terminated this contract predicated on the unsatisfactory delivery of service. DPW officials informed us that some of the components of the system developed by Consultec, Inc., in particular the system data base, did not meet DPW and Office of Management Information Systems (OMIS) standards. At this time, DPW had paid Consultec, Inc., approximately \$8.2 million.

On June 11, 1986, Consultec, Inc., filed civil action #83821 in Suffolk Superior Court seeking judgment against the Commonwealth and DPW in the amount of \$4,721,592. This amount, the action contends, is for goods delivered and services rendered to the Commonwealth for which payment has not been received. In addition to this amount, Consultec is seeking reimbursement for any attorney's fees it incurs in seeking judgment on this civil action suit.

DPW's legal counsel informed us that at some point subsequent to the audit completion date, DPW would file a counter claim for damages against Consultec in the amount of approximately \$16 million. The counter claim will cite Consultec for breach of contract, breach of express warranty, breach of implied warranty, and negligence.

GLOSSARY

Service Contracts - The legal procedures and documents through which the state agrees to purchase services from both public and private vendor organizations. This method is an alternative to the state providing these specific services itself.

"07" Services - "07" refers to that subsidiary account in the Expenditure Code Manual for the purchase of "Laboratory and Medical Supplies and Expenses and General Care." Most commonly associated with the term "07 services" are the programs that fall under object codes 393 and 394 in the Expenditure Code Manual. These object codes pertain to the delivery of residential and non-residential social and rehabilitative services.

"03" Consultant Services - "03" refers to that subsidiary account in the Expenditure Code Manual for the purchase of non-employee services. These include the services of professionals that require ". . . discretion and judgment in a formal field of knowledge and academic study, training, or experience." The "03" subsidiary is also established for the services of non-employees, both professional and non-professional, that are engaged for a limited specified period of time and are not services that state employees ordinarily perform or for which state employees are not currently available to perform. "03" contracts may be executed with individuals, corporations, or as blanket contracts as defined below.

- a. Individual Contracts: These contracts are written between private individuals and the purchasing state agency. The individual is the only person compensated under the terms of the contract.
- b. Organizational Contracts: These are contracts between organizations and the state. The organization is compensated under the terms of the contract for either professional or non-professional services delivered to the state agency or its clients.
- c. Blanket Contracts: These contracts are used when the exact scope of services needed is unknown. Typically, under a blanket contract a number of separate individuals provide similar services on an intermittent basis. For instance, emergency and temporary clerical help or the services of medical specialists might be appropriately purchased using a blanket contract.

Subconsultant: A consultant employed by another consultant, in this case under the employing consultant's contract with the state, is a subconsultant.

Fiscal Intermediary: Any organization that performs exclusively fiscal and/or payroll functions for a state agency serves as a fiscal intermediary.

AGENCY HEADS

Frank T. Keefe, Secretary
Executive Office for Administration and Finance

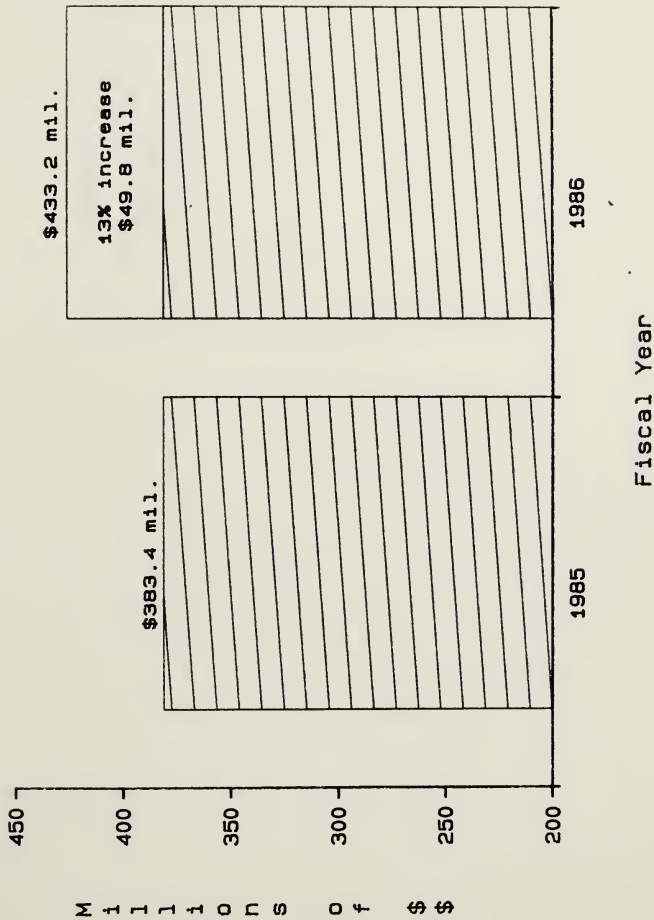
Philip W. Johnston, Secretary
Executive Office of Human Services

Charles M. Atkins, Commissioner
Department of Public Welfare

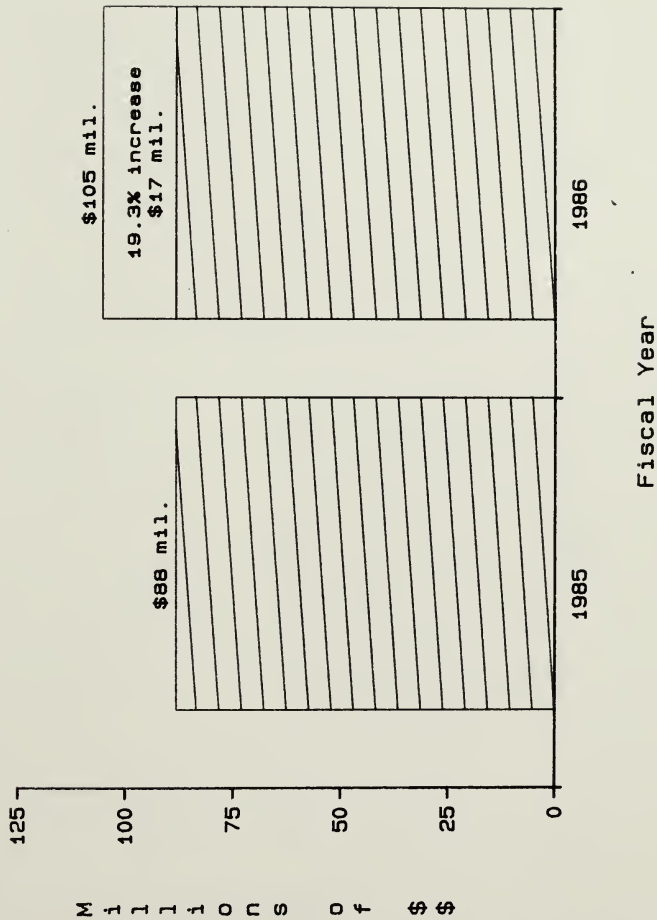
Edward M. Murphy, Commissioner
Department of Mental Health

Marie A. Matava, Commissioner
Department of Social Services

"03" Expenditures
Statewide



Combined "03" Expenditures of
DMH, DPW & DSS



Comparative Growth of "03" Expenditures
vs. "01"/"02" Expenditures for DMH, DPW & DSS
1985 - 1986

